

REMARKS

Claims 98-151 were previously pending, claims 112-137 were previously withdrawn, and claim 1-97 and 109 were previously cancelled without prejudice or disclaimer in this application. Applicants respectfully request reconsideration of the instant application in view of the foregoing amendments and/or the following remarks. By this Amendment/Response, Applicants have amended claims 98, 138 and 148-151 to provide clarification and/or correct minor typographical informalities. Applicants submit that support for the amendments may be found throughout the originally filed specification, drawings and claims, and that no new matter has been added by way of this Amendment/Response. Applicants further maintain that the original claims are allowable and explicitly reserve the right to add/pursue the original claims later and/or in one or more continuation and/or divisional applications. Claims 98-108, 110, 111 and 138-151 are currently under examination.

Rejection under 35 U.S.C. § 103

Claims 98, 100-102, 104, 107, 108, 148 and 150-151 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Fisher et al., U.S. Patent no. 5,835,896 (hereinafter, "Fisher") in view of Barzilai, et al., U.S. Patent no. 6,012,045 (hereinafter, "Barzilai"); claims 138-141 and 143-145 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Fisher in view of Barzilai and in further view of Huberman, U.S. Patent no. 5,826,244 (hereinafter, "Huberman"); claims 103 and 105 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Fisher in view of Barzilai and in further view of Godin, U.S. Patent no. 5,890,138 (hereinafter, "Godin"); claims 106 and 111 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Fisher in

view of Barzilai and in further view of Cathay Pacific Airways auctions article (hereinafter, "Cathay"); claim 149 has been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Fisher in view of Barzilai and in further view of Godin and in further view of Cathay; claims 99 and 110 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Fisher in view of Barzilai and in further view of Spallone, U.S. Patent no. 4,959,686 (hereinafter, "Spallone"); claim 142 has been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Fisher in view of Barzilai and in further view of Huberman and in further view of Godin; and claims 146 and 147 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Fisher in view of Barzilai and in further view of Huberman and in further view of Cathay. Although Applicants respectfully traverse these rejections and submit that a *prima facie* showing of obviousness has not been established and that the applied references, taken alone or in combination, fail to discuss or render obvious every element of each pending claim, Applicants have amended the claims to provide clarification.

Amended independent claim 98 recites, *inter alia*,

A system, comprising:

...
take an action to deter the customer from submitting multiple conditional purchase offers for said goods or services, wherein said action includes restricting additional conditional purchase offers containing a progressively increasing unit price following an initial conditional purchase offer rejection.

Applicants submit that at least these elements from independent claim 98 are not discussed or rendered obvious by the applied references, taken alone or in combination. While the pending rejection acknowledges, "Fisher does not explicitly disclose take an action to deter the customer from submitting multiple conditional purchase offers for said goods or

services, wherein said action includes restricting additional conditional purchase offers containing a progressively increasing unit price," the rejection goes on to allege that, "Barzilai discloses [it] (col. 14, lines 10-21, *disclosing that the bidding system will reject bids greater than the lowest high bid from a single bidder, i.e. bidder 1 bids 32 and 38 dollars, the 32 dollar bid is accepted and the 38 dollar bid is rejected because it was higher than the lowest bid made by member #1*)." (June 25, 2009 Office Action, p. 4, § 4; original italics). Applicants respectfully traverse this rejection and submit that Barzilai's system encourages submission of multiple bids from bidders and merely selects the lowest winning bid from a given bidder, not considering any other bids submitted by the same bidder that exceed his own winning bid. That Barzilai's system encourages submission of multiple bids is evidenced, for example, at col. 14, lines 10-12: "An important feature of the present invention enables the customer or member to place multiple bids (in a preferred embodiment of up to 8 bids) on a single product or service." Applicants respectfully submit that Barzilai teaches that submission of multiple incrementally increasing bids is actually advantageous and desirable for a bidder, since this increases the likelihood that at least one of the bidder's bids will be a winning bid (i.e., higher than all bids submitted by other bidders). Accordingly, Applicants submit that Barzilai clearly fails to discuss or render obvious at least, "take an action to deter the customer from submitting multiple conditional purchase offers for said goods or services," and, "said action includes restricting submission of additional conditional purchase offers containing a progressively increasing unit price," as recited in independent claim 98.

Furthermore, Applicants submit that both the submission of multiple bids and the ignoring of bids by a given user that exceed his or her lowest winning bid in Barzilai's system both occur within a single bidding period. Accordingly, Barzilai fails to discuss or render

obvious at least, "restricting submission of additional conditional purchase offers containing a progressively increasing unit price following an initial conditional purchase offer rejection," as recited by independent claim 98.

Applicants also submit that neither Fisher, which describes an electronic system for conducting a multi-person interactive auction, nor Huberman, which describes brokering of bids for document services, nor Godin, which describes a rapid feedback reverse auction process, nor Cathay, which provides general description of online airline ticket sales, nor Spallone, which describes an automated shopping order entry system, remedy the deficiencies in Barzilai identified above with regard to independent claim 98. The MPEP prescribes that, "when evaluating the scope of a claim, *every limitation in the claim must be considered*," [§ 2106 II(C), emphasis added] and, "*All words* in a claim must be considered in judging the patentability of that claim against the prior art." [§ 2143.03, emphasis added]. As none of the applied references, taken alone or in combination, discuss or render obvious at least the claim elements discussed above, Applicants respectfully request reconsideration and withdrawal of this basis of rejections. Should the Examiner maintain the rejection, Applicants respectfully request specific clarification as to how and where the Examiner believes the applied references allegedly discuss, "take an action to deter the customer from submitting multiple conditional purchase offers for said goods or services, wherein said action includes restricting submission of additional conditional purchase offers containing a progressively increasing unit price following an initial conditional purchase offer rejection," as recited by independent claim 98.

Although of different scope than claim 98, Applicants submit that claim 138 is patentable over the applied references for at least similar reasons as those discussed above.

For example, amended claim 138 recites, *inter alia*,

A system, comprising:

...

take an action to deter the customer from submitting a second conditional purchase offer with an increased offer unit price for said goods or services within a predetermined period of time after transmitting a rejection of said first conditional purchase offer, wherein said action includes restricting submission of additional conditional purchase offers containing a progressively increasing unit price following an initial conditional purchase offer rejection.

Applicants submit that at least these elements from independent claim 138 are not discussed or rendered obvious by the applied references, taken alone or in combination, for at least similar reasons as those discussed above identifying deficiencies in the applied references with regard to independent claim 98. Accordingly, Applicants respectfully request reconsideration and withdrawal of this basis of rejections.

Although of different scope than claim 98, Applicants submit that claim 148 is patentable over the applied references for at least similar reasons as those discussed above.

For example, amended claim 148 recites, *inter alia*,

A system, comprising:

...

take an action to deter the customer from submitting multiple conditional purchase offers for said goods or services, wherein said action includes restricting submission of additional conditional purchase offers containing a progressively increasing unit price based on an unacceptable conditional purchase offer following an initial conditional purchase offer rejection.

Applicants submit that at least these elements from independent claim 148 are not discussed or rendered obvious by the applied references, taken alone or in combination, for at

least similar reasons as those discussed above identifying deficiencies in the applied references with regard to independent claim 98. Accordingly, Applicants respectfully request reconsideration and withdrawal of this basis of rejections.

Although of different scope than claim 98, Applicants submit that claim 149 is patentable over the applied references for at least similar reasons as those discussed above. For example, amended claim 149 recites, *inter alia*,

A system, comprising:

...
take an action to deter the customer from submitting multiple conditional purchase offers for said goods or services, wherein said action includes restricting submission of additional conditional purchase offers containing a progressively increasing unit price following an initial conditional purchase offer rejection.

Applicants submit that at least these elements from independent claim 149 are not discussed or rendered obvious by the applied references, taken alone or in combination, for at least similar reasons as those discussed above identifying deficiencies in the applied references with regard to independent claim 98. Accordingly, Applicants respectfully request reconsideration and withdrawal of this basis of rejections.

Although of different scope than claim 98, Applicants submit that claim 150 is patentable over the applied references for at least similar reasons as those discussed above. For example, amended claim 150 recites, *inter alia*,

A system, comprising:

...
take an action to deter the customer from submitting multiple incremental conditional purchase offers for said goods or services following an initial conditional purchase offer rejection to prevent the customer from identifying a seller's selling price for accepting the conditional purchase offer.

Applicants submit that at least these elements from independent claim 150 are not discussed or rendered obvious by the applied references, taken alone or in combination, for at least similar reasons as those discussed above identifying deficiencies in the applied references with regard to independent claim 98. Accordingly, Applicants respectfully request reconsideration and withdrawal of this basis of rejections.

Although of different scope than claim 98, Applicants submit that claim 151 is patentable over the applied references for at least similar reasons as those discussed above. For example, amended claim 151 recites, *inter alia*,

A system, comprising:

...
(ii) take an action to deter the same customer from submitting multiple conditional purchase offers for said goods or services, wherein said action includes restricting submission of additional conditional purchase offers containing a progressively increasing unit price following an initial conditional purchase offer rejection.

Applicants submit that at least these elements from independent claim 151 are not discussed or rendered obvious by the applied references, taken alone or in combination, for at least similar reasons as those discussed above identifying deficiencies in the applied references with regard to independent claim 98. Accordingly, Applicants respectfully request reconsideration and withdrawal of this basis of rejections.

Furthermore, Applicants submit that claims 99-108, 110, 111 and 139-147, which are directly or indirectly dependent from independent claims 98 and 138, are also not discussed or rendered obvious by the applied references, taken alone or in combination, for at least similar reasons as those discussed above identifying deficiencies in the applied references

with regard to the independent claims. Accordingly, Applicants respectfully request reconsideration and withdrawal of this basis of rejections.

CONCLUSION

Consequently, the reference(s) cited by the office action do not result in the claimed invention, there was/is no motivation, basis and/or rationale for such a combination of references (i.e., cited references do not teach, read on, suggest, or result in the claimed invention(s)), and the claimed inventions are not admitted to be prior art. Thus, the Applicant respectfully submits that the supporting remarks and claimed inventions, claims 98-108, 110, 111 and 138-151, all: overcome all rejections and/or objections as noted in the office action, are patentable over and discriminated from the cited reference(s), and are in a condition for allowance. Furthermore, Applicant believes that the above remarks, which distinguish the claims over the cited reference(s), pertained only to noted claim element portions. These remarks are believed to be sufficient to overcome the prior art. While many other claim elements and/or bases for rejection were not discussed as they have been rendered moot based on the above amendments and/or remarks, Applicant asserts that all such remaining and not discussed claim elements and/or bases for rejection, all, also are distinguished over the prior art and reserves the opportunity to more particularly traverse, remark and distinguish over any such remaining claim elements and/or bases for rejection at a later time, should it become necessary. Further, any remarks that were made in response to an Office Action objection and/or rejection as to any one claim element, and which may have been re-asserted as applying to another Office Action objection and/or rejection as to any other claim element(s), any such re-assertion of remarks is not meant to imply that there is commonality about the structure, functionality, means, operation, and/or scope of any of the claim

elements, and no such commonality is admitted as a consequence of any such re-assertion of remarks. As such, Applicant does not concede that any claim elements have been anticipated and/or rendered obvious by any of the cited reference(s). Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection(s) and/or objection(s), and allowance of all claims.

Authorization

Applicant hereby authorizes and requests that the Commissioner charge any additional fees that may be required for consideration of this and/or any accompanying and/or necessary papers to Deposit Account No. 03-1240, Order No. 17200-020CT2. In the event that an extension of time is required (or which may be required in addition to that requested in a petition for an extension of time), Applicant requests that the Commissioner grant a petition for an extension of time required to make this response timely, and, Applicant hereby authorizes and requests that the Commissioner charge any fee or credit any overpayment for such an extension of time to Deposit Account No. 03-1240, Order No. 17200-020CT2.

In the event that a telephone conference would facilitate examination of the application in any way, Applicant invites the Examiner to contact the undersigned at the number provided.

Respectfully submitted,
CHADBOURNE & PARKE LLP

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